

Maine's Form for the Determination of Adverse Effect: A tool for IEP Teams

October 13, 2011

Background

- *M.U.S.E.R. 101 Final Adoption 2010* contained a “Data based procedure for eligibility determination,” (pages 81-82, VII.3).
- MDOE assembled a stakeholder group, at request of Education Committee, to make recommendations regarding changes to this and other sections of M.U.S.E.R. 101.
- Most of the recommendations became basis for many (not all) changes contained in M.U.S.E.R. 101 final Adoption July 2, 2011.

Stakeholder Group's Recommendations to MDOE

- Move definition of Adverse Effect in *M.U.S.E.R. 101* from *VII.3 Data Based Procedure* to *Section II. Definitions*.
- Remove examples of assessments and data sources which IEP Team might consider in determining AE from *VII.3 Data Based Procedure* (page 82 of *M.U.S.E.R. 101 Final Adoption 2010*) and put these on a form.
- MDOE reviewed the form and issued for 2011-12 year.

Goals of AE Form

- Help IEP Team answer question: “Does the child’s disability adversely affect educational performance?”
- A means to document the Team’s answer.
- Encourage Team to ask: “Have we looked at this from all angles?”
- Simplify regulatory language.

Step-by-step through the AE Form

Introductory paragraph

This procedure applies only to the following eligibility categories: autism, deafness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, orthopedic impairment, other health impairment, speech and language impairment, traumatic brain injury, and visual impairment, including blindness. This form will be used whenever there is a determination of eligibility or consideration of a change in eligibility. The IEP Team will need to follow the steps in MUSER Section VII(4) Criteria for change in Eligibility in the latter case.

Based on current guidance and regulations, both the AE form and the Speech Language forms are needed for an eligibility determination under Speech Language Impairment.

Definition

Definition: **Adverse effect/Adversely affects.** The word “adverse” commonly means “harmful, impeding, obstructing, or detrimental.” To “adversely affect” means to have a negative impact that is more than a minor or transient hindrance, evidenced by findings and observations based on data sources and objective assessments with replicable results. An adverse effect on educational performance does not include a developmentally appropriate characteristic of age/grade peers in the general population.

From M.U.S.E.R. 101 Section II.3.

Procedure for Determination

The IEP Team's determination of adverse effect shall be based upon the results of assessments and/or data sources determined by the team to be necessary to validate the effect of the disability on educational performance. In most situations, the IEP Team shall consider multiple assessments/data sources for determination of adverse effect. If the IEP Team determines that a single assessment/data source is adequate for determination of adverse effect, the team will document the rationale on this form.

From M.U.S.E.R. 101 Section VII.3 (emphasis added)

Basics

- Student information
- 10 different data source categories that may offer evidence of how disability is adversely affecting educational performance (#10 is 'Other')—not all will be relevant.
- For each data source, report whether the IEP Team reviewed this type of data as part of its determination—some will be 'yes' and some 'no.'
- Think of data source categories as a checklist, "Did we look at this? At that?"

Basics (continued)

- 'Verification' contains evidence which the IEP Team found to verify/validate the presence of AE.
- If a data source is reviewed, answer 'yes;' if it provides evidence of AE, document the evidence with specifics (e.g. test and score) under 'Verification.'
- If data source is reviewed, answer 'yes'; if it does not contain evidence of AE, identify the specific source (e.g. test name) and write 'None' or 'None Found' under 'Verification.'

#1

Standard or percentile scores on nationally-normed, individually-administered achievement test(s); or for children ages 3 to 5, appropriate multi-domain nationally-normed test(s) or rating scale(s)

Includes Woodcock Johnson and Wechsler Individual Achievement Test. For 3 to 5 year olds, this includes the Battelle.

Example: 2010 WIAT Reading 70

#2

Standard or percentile scores on nationally-normed, group-administered achievement test(s), including nationally-normed, curriculum-based measures

This will not be relevant to all children and/or all districts. This includes PSAT, SAT, and NWEA. It does not include MEA or NECAP because they are not nationally-normed.

Example: 2009 & 2010 NWEA Reading 20th percentile

#3

Any report prepared by the SAU or presented by the parent/guardian that reflects academic or functional performance

This is very broad (refer to M.U.S.E.R. 101 definition of functional performance). It includes Vineland scores, academic grades, reports by parent or outside providers, reports of whether student meets standards in standards-based system.

Example: Community providers/family report below age level hygiene skills.

#4

Performance on comprehensive assessments based on a system of learning results, or the Common Core as of 2014, or measurements of indicators within the Early Childhood Learning Guidelines

This includes local assessments based on learning results, MEAs, NECAPs, writing prompts, and curriculum-based measures such as DRA, DIBELS, Everyday Math, etc.

Example: 2007 MEA Does Not Meet all areas, 2010 NECAP Does Not Meet all areas

#5

Criterion-referenced assessment(s) of academic or functional performance

These include ABLLS, Brigance Inventory of Early Development, School Function Assessment, NECAPs, MEAs, classroom test scores (not grades).

Example: 2010 Does Not Meet 9th Grade English standards

#6

**Student work products, language samples, or
portfolios**

*Writing prompts, handwriting samples,
portfolios of work, classroom work samples.*

*Example: 2009 spring science project & end of
year English writing prompt lacked simple
paragraph structure, reflected early elementary
spelling*

#7

Disciplinary evidence or rating scales based on systemic observations in more than one setting by professionals or parents/guardians

Disciplinary reports/office referrals, Functional Behavioral Assessment (FBA), BASC Rating Scales, BRIEF, behavior data sheets/logs, classroom observation(s).

Example: 50% refusal response rate to simple teacher directives (e.g. open books, move to new station)

#8

Attendance patterns

Attendance records (school and/or class)

Example: For two years (2009-10 and 2010-11) school attendance drops to one day per week by second semester. Does not attend school events or extracurriculars either.

#9

Social or emotional deficits as observed by professionals or parents/guardians in multiple settings, on clinical rating scales or in clinical interviews

Various rating scales including BASC, BRIEF, Achenbach, etc.

Example: Johnston (LCSW) observation 2010: no reciprocal play, lack response to peer invitation, lack of eye contact

#10

Other (add any other data sources)

If the Team feels there is other information not identified above but reviewed and relevant to the consideration of AE, list here.

If the IEP Team determines that a single assessment/data source is adequate for the determination of adverse effect on educational performance, the team will state its rationale below:

When one data source, to the exclusion of all others, compels the Team to determine adverse effect, explain this.

The data sources reviewed and the specific findings associated with the determination of adverse effect shall be documented in the Written Notice. This form will be attached and included with the Written Notice.

For each IEP Meeting at which an eligibility determination is made (yea or nay), reference the attached AE Form. For example, “IEP Team reached consensus that Adverse Effect on Educational Performance exists based on Adverse Effect Form data sources #s 1, 2, 4, 8 . Specifically: [provide the specific evidence of AE such as scores, absentee rate, report findings, etc.]

The IEP Team has determined that there is an adverse effect on educational performance.

_____Yes _____No

Is there consensus that the child's disability adversely affects educational performance?

Don't stop here!

The Team has not finished.

If there is consensus that AE exists,
remember to now determine whether
the child needs special education.

Needs special education

M.U.S.E.R. 101 VII.3 (page 82): “Although federal regulations do not define “needs,” the word commonly signifies something necessary, something exigent or the “lack of something essential.” A child “needs” special education and related services when, because of the disability, the child can neither progress effectively in a regular education program nor receive reasonable benefit from such a program in spite of other services available to the child.

“The need is best established through evidence of a distinctly measurable and persistent gap in the child’s educational or functional performance that cannot be addressed through services or accommodations available through the general education program.”

Questions?